

Senate Daily Reader

Tuesday, February 19, 2002

Bills Included				
HB 1034	HB 1038	HB 1078	HB 1136	HB 1164
HB 1240	HB 1273	HB 1291	HB 1294	HCR 1018
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State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

400H0213

HOUSE ENGROSSED NO. **HB 1034** - 01/25/2002

Introduced by: The Committee on Transportation at the request of the Department of
Transportation

1 FOR AN ACT ENTITLED, An Act to reduce the legal blood alcohol limits for motor vehicle
2 drivers and boat operators.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 32-23-1 be amended to read as follows:

5 32-23-1. ~~A~~ No person may ~~not~~ drive or be in actual physical control of any vehicle while:

6 (1) There is ~~0.10~~ 0.08 percent or more by weight of alcohol in ~~his~~ that person's blood as
7 shown by chemical analysis of ~~his~~ that person's breath, blood, or other bodily
8 substance;

9 (2) Under the influence of an alcoholic beverage;

10 (3) Under the influence of marijuana or any controlled drug or substance to a degree
11 which renders ~~him~~ the person incapable of safely driving; or

12 (4) Under the combined influence of an alcoholic beverage and marijuana or any
13 controlled drug or substance to a degree which renders ~~him~~ the person incapable of
14 safely driving.

15 Section 2. That § 32-23-7 be amended to read as follows:



32-23-7. In any criminal prosecution for a violation of § 32-23-1 relating to driving a vehicle while under the influence of intoxicating liquor, a violation of § 22-16-41, or a violation of § 22-16-42, the amount of alcohol in the defendant's blood at the time alleged as shown by chemical analysis of the defendant's blood, breath, or other bodily substance ~~shall give~~ gives rise to the following presumptions:

(1) If there was at that time five hundredths percent or less by weight of alcohol in the defendant's blood, it ~~shall be~~ is presumed that the defendant was not under the influence of intoxicating liquor;

(2) If there was at that time in excess of five hundredths percent but less than ~~ten~~ eight hundredths percent by weight of alcohol in the defendant's blood, such fact ~~shall~~ does not give rise to any presumption that the defendant was or was not under the influence of intoxicating liquor, but such fact may be considered with other competent evidence in determining the guilt or innocence of the defendant;

(3) If there was at that time ~~ten~~ eight hundredths percent or more by weight of alcohol in the defendant's blood, it ~~shall be~~ is presumed that the defendant was under the influence of intoxicating liquor.

Percent by weight of alcohol in the blood shall be based upon milligrams of alcohol per 1.0 cubic centimeters of whole blood or 2100 cubic centimeters of deep lung breath.

Section 3. That § 32-23-1.3 be amended to read as follows:

32-23-1.3. Any person arrested for driving or being in actual physical control of a vehicle while the weight of alcohol in the blood of the arrested person is ~~0.10~~ 0.08 percent or greater, shall be charged with a violation of § 32-23-1. The charge may be reduced or dismissed only if the prosecuting attorney states the reasons for reduction or dismissal in writing and on the record and files the reasons with the clerk of courts.

Section 4. That § 32-12A-44 be amended to read as follows:

32-12A-44. No person may drive or be in actual physical control of a commercial motor vehicle while there is between 0.04 and ~~0.10~~ 0.08 percent or more, by weight of alcohol in that person's blood as shown by chemical analysis of that person's breath, blood, or other body substance. Any violation of this section is a Class 2 misdemeanor.

Section 5. That § 42-8-45 be amended to read as follows:

42-8-45. No person may operate a boat while underway on the public waters of the state while:

- (1) There is ~~0.10~~ 0.08 percent or more by weight of alcohol in his blood as shown by chemical analysis of ~~his~~ that person's breath, blood, or other bodily substance;
- (2) Under the influence of an alcoholic beverage;
- (3) Under the influence of marijuana or any controlled drug or substance to a degree which renders ~~him~~ the person incapable of safely driving or operating such boat; or
- (4) Under the combined influence of an alcoholic beverage and marijuana or any controlled drug or substance to a degree which renders ~~him~~ the person incapable of safely driving or operating such boat.

Any violation of this section is a Class 1 misdemeanor.

Section 6. That § 42-8-45.4 be amended to read as follows:

42-8-45.4. In any criminal prosecution for a violation of § 42-8-45, the amount of alcohol in the defendant's blood at the time alleged as shown by chemical analysis of the defendant's blood, breath, or other bodily substance ~~shall give~~ gives rise to the following presumptions:

- (1) If there was at that time five hundredths percent or less by weight of alcohol in the defendant's blood, it ~~shall be~~ is presumed that the defendant was not under the influence of intoxicating liquor;

1 (2) If there was at that time in excess of five hundredths percent but less than ~~ten~~ eight
2 hundredths percent by weight of alcohol in the defendant's blood, such fact does not
3 give rise to any presumption that the defendant was or was not under the influence of
4 intoxicating liquor, but such fact may be considered with other competent evidence
5 in determining the guilt or innocence of the defendant;

6 (3) If there was at that time ~~ten~~ eight hundredths percent or more by weight of alcohol
7 in the defendant's blood, it ~~shall be~~ is presumed that the defendant was under the
8 influence of intoxicating liquor.

9 Percent by weight of alcohol in the blood shall be based upon milligrams of alcohol per 1.0
10 cubic centimeters of whole blood or 2100 cubic centimeters of deep lung breath.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

400H0194

SENATE ENGROSSED NO. **HB 1038** - 02/04/2002

Introduced by: The Committee on Transportation at the request of the Department of
Commerce and Regulation

1 FOR AN ACT ENTITLED, An Act to authorize certain law enforcement vehicles to exceed
2 speed limits without the use of an audible siren, air horn, or flashing emergency lights under
3 certain conditions.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. That § 32-31-4 be amended to read as follows:

6 32-31-4. The speed limit set out in §§ 32-25-1.1 to 32-25-17, inclusive, does not apply to
7 any authorized emergency vehicle responding to an emergency call if the driver sounds an audible
8 siren or air horn, or both, and displays flashing, oscillating, or rotating beams of red light or
9 combinations of red, blue, or white light visible one hundred eighty degrees to the front of the
10 vehicle. The lights shall be capable of warning the public of the presence of an emergency vehicle
11 under normal atmospheric conditions. The speed limit set out in §§ 32-25-1.1 to 32-25-17,
12 inclusive, does not apply to any certified authorized emergency ~~vehicles~~ vehicle operated by any
13 law enforcement ~~officers~~ officer who ~~are~~ is measuring the speed of other vehicles by use of the
14 emergency vehicle speedometer, while any certified law enforcement officer is overtaking an
15 actual or suspected violator of the law, or while any certified law enforcement officer is



1 responding to an emergency call. Moreover, the driver of an ambulance who has been certified
2 pursuant to § 34-11-6 may operate the emergency vehicle in excess of the speed limit without
3 audible signals while operating outside the city limits of a municipality.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

553H0444

SENATE COMMERCE COMMITTEE ENGROSSED NO.

HB 1078 - 02/14/2002

Introduced by: Representatives Broderick and Pummel and Senators Munson and Duxbury

1 FOR AN ACT ENTITLED, An Act to revise certain bond and insurance requirements for trust
2 companies.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 51A-6A-18 be repealed.

5 ~~—51A-6A-18. A trust company must, at all times, maintain a surety bond appropriate to the~~
6 ~~size and scope of the company's business, but in no event, in an amount less than one million~~
7 ~~dollars. In determining the amount of surety bond, the company's governing board shall give due~~
8 ~~and careful consideration to known elements and factors constituting risk and hazards for the~~
9 ~~company. Any surety bond secured by a trust company shall provide that the bonding company~~
10 ~~providing the bond shall give at least ninety days notice of cancellation or nonrenewal of the~~
11 ~~bond to the trust company and to the director.~~

12 Section 2. That § 51A-6A-19 be amended to read as follows:

13 51A-6A-19. For purposes of this section, the capital of a trust company ~~shall be~~ is the total
14 of the aggregate par value of its outstanding shares of capital stock or ownership units, its
15 surplus, and its undivided profits. The minimum capital of a trust company shall be two hundred



1 thousand dollars. The commission may require that the trust company have more capital than the
2 amount specified if the commission determines that the amount and character of the anticipated
3 business of the trust company and the safety of the customers so require. This chapter recognizes
4 that capital for a trust company serves a different purpose than does capital for a bank. It is not
5 intended that capital requirements for trust companies be judged by the same standards as banks.
6 Basic protection for fiduciary clients of a trust company shall be provided by the purchase of a
7 surety bond or a fidelity insurance bond, or both, ~~as provided in § 51A-6A-18.~~ The bond shall
8 be in an amount of not less than one million dollars. Any bond required to be secured by a trust
9 company shall provide that the bonding company providing the bond shall give at least ninety
10 days notice of cancellation or renewal of the bond to the trust company and to the director.
11 Except as may be provided elsewhere in this chapter, no trust company may reduce voluntarily
12 its capital stock or ownership units or surplus below the amount required in this section.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

543H0472

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1136** - 02/04/2002

Introduced by: Representatives Olson (Mel), Bartling, Bradford, Burg, Davis, Elliott, Flowers, Gillespie, Glenski, Hanson (Gary), Hargens, Hundstad, Kloucek, Nachtigal, Nesselhuf, Peterson (Jim), Sigdestad, and Valandra and Senators Hutmacher, Dennert, Hagen, Koetzle, McIntyre, Moore, Reedy, Sutton (Dan), Symens, and Volesky

1 FOR AN ACT ENTITLED, An Act to clarify the approval authority for local accounts of the
2 state treasurer and state auditor.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 4-4-3 be amended to read as follows:

5 4-4-3. All state public funds shall be received and maintained in the state treasury, and shall
6 be disbursed only upon proper authorization by the state auditor and the state treasurer, unless
7 the state treasurer and state auditor ~~shall~~ jointly determine a justification exists for maintaining
8 ~~such~~ public funds in a local bank account. A local bank account authorized by the state auditor
9 and state treasurer is an official account of the state subject to the custody of the state treasurer
10 under § 1-10-1. Neither the state treasurer nor the state auditor may be a signatory on any local
11 account. Any agency holding state funds in any local bank account shall provide a quarterly
12 statement of activity in that account to the state treasurer and the state auditor.

13 Section 2. That § 4-3-5 be amended to read as follows:



1 4-3-5. ~~Every such~~ Each officer or employee shall designate in writing, to be filed in ~~his~~ the
2 officer's or employee's office, the bank or banks in which ~~he shall have~~ are deposited the current
3 receipts of ~~his~~ the office or department ~~and any~~. Any account showing any such deposit ~~shall be~~
4 is an official account and shall be accessible to the inspection of the auditor-general at any time
5 during banking hours.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

562H0395

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1164 - 02/14/2002

This bill has been extensively amended (houghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Representatives Van Etten, Brown (Jarvis), Eccarius, Madsen, Michels, Monroe, Murschel, and Olson (Mel) and Senators Bogue, Cradduck, Everist, and Hutmacher

1 FOR AN ACT ENTITLED, An Act to abrogate the loss of chance doctrine as set forth in
2 Jorgenson v. Vener.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. The Legislature finds that the application of the loss of chance doctrine enunciated
5 by the South Dakota Supreme Court in *Jorgenson v. Vener*, 2000 SD 87, 616 NW2d 366
6 improperly alters the requirements of causation. However, the Legislature also finds that the
7 abrogation of the court's decision would leave certain patients or other individuals without a
8 standard of care. Therefore, the Legislature adopts the substantial factor test in medical
9 malpractice actions as set forth in the concurring opinion of Justice Amundson in *Jorgenson v.*
10 *Vener*, 2000 SD 87, 616 NW2d 366.



State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

565H0163

SENATE COMMERCE COMMITTEE ENGROSSED NO.

HB 1240 - 02/14/2002

Introduced by: Representatives Frost, Broderick, Lintz, Pederson (Gordon), Sebert, and Wick
and Senators McCracken, McIntyre, Moore, Munson, Sutton (Dan), Vitter,
and Volesky

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to the Statewide One-
2 Call Notification Board, to create enforcement authority for the board, and to provide for
3 certain penalties and fines.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. That § 49-7A-2 be amended to read as follows:

6 49-7A-2. The Statewide One-Call Notification Board is established as an agency of state
7 government administered by the Public Utilities Commission and funded solely by revenue
8 generated by the one-call notification center. Any interest earned on money in the state one-call
9 fund shall be deposited in the fund. The money is continuously appropriated to the board to
10 implement and administer the provisions of this chapter. The one-call notification center may be
11 organized as a nonprofit corporation. The one-call notification center shall provide a service
12 through which a person can notify the operators of underground facilities of plans to excavate
13 and to request the marking of the facilities. All operators are subject to this chapter and the rules
14 promulgated thereto. Any operator who fails to become a member of the one-call notification



center or who fails to submit the locations of the operator's underground facilities to the center, as required by this chapter and rules of the board, is subject to applicable penalties under sections 12 and 13 of this Act and is subject to civil liability for any damages caused by noncompliance with this chapter. Any penalties which may be assessed by the board under this chapter shall be collected as provided by law and deposited into the one-call fund.

Section 2. That § 49-7A-4 be amended to read as follows:

49-7A-4. The One-Call Notification Board shall by rules, promulgated pursuant to chapter 1-26, establish the procedures to operate a nonprofit one-call notification center, establish a ~~notification process, establish a system of standard colors for marking~~ the procedures that regulate the notification process and marking of underground facilities to prevent damage to underground facilities, establish the procedures for gathering information from facility operators that could further improve the ability to reduce damage to underground facilities, establish a competitive bidding procedure to select a vendor to provide the notification service, and establish a procedure whereby members of the one-call notification center share in the costs of the one-call notification center.

Section 3. That § 49-7A-5 be amended to read as follows:

49-7A-5. No excavator may begin any excavation without first notifying the one-call notification center of the proposed excavation. The excavator shall give notice by telephone, facsimile, in person, or by other methods approved by the board pursuant to rules promulgated pursuant to chapter 1-26 to the one-call notification center at least forty-eight hours prior to the commencement of the excavation, excluding Saturdays, Sundays, and legal holidays of the state, but not more than ten business days prior to any excavation. ~~Notice to the one-call notification center is notice to each member of the one-call notification center, except in instances when an operator directs the one-call notification center to require the excavator to personally contact~~

1 ~~the operator. In such instance the center shall furnish the excavator with information necessary~~
2 ~~to contact the operator. No member is required to accept notification more than ten business~~
3 ~~days prior to the excavation unless it is for planning purposes for projects that may affect the~~
4 ~~underground facilities. Once notice is given it is effective for the duration of the excavation.~~
5 ~~However, if the markings made by the operator pursuant to § 49-7A-8 disappear the excavator~~
6 ~~shall provide notice again as required by this chapter. The board may promulgate rules to reduce~~
7 ~~the forty-eight-hour interval for emergency or subsequent inquiries to the original locate request~~
8 ~~and may lengthen the forty-eight-hour interval for nonexcavation requests.~~

9 Section 4. That § 49-7A-6 be repealed.

10 ~~—49-7A-6. The notice shall contain the name, address and telephone number of the person~~
11 ~~making the notification; the name, address and telephone number of the excavator; the date and~~
12 ~~time when excavation is scheduled to begin; the depth of planned excavation; the type and extent~~
13 ~~of excavation being planned including whether the excavation involves tunneling or horizontal~~
14 ~~boring; and, if applicable, whether the use of explosives is anticipated. Any phone number given~~
15 ~~by the excavator shall provide access to the excavator during normal business hours. The notice~~
16 ~~shall also contain location of the excavation by any one or more of the following means:~~

17 ~~—(1)—A specific street or rural address, which has a numbered address on a marked street~~
18 ~~or avenue that is publicly recorded;~~

19 ~~—(2)—A reference to a platted lot number of record; or~~

20 ~~—(3)—A specific quarter section by section, range, township and county.~~

21 ~~—The notice shall also describe the excavation area within each location. In each notice the~~
22 ~~excavator shall describe the area to be excavated from structures or roads or other known points~~
23 ~~of reference on or near the property, or in lieu of such description, an excavator may indicate in~~
24 ~~the notice that the excavator will flag or mark the site or boundaries of the excavation. If it is~~

1 impractical to flag, mark, or describe the excavation, the excavator shall schedule a meeting with
2 the operators to inform them of the extent of the excavation on the site. The one-call notification
3 center may not confirm the notice until the excavator complies with this section.

4 Section 5. That § 49-7A-6.1 be amended to read as follows:

5 49-7A-6.1. No operator may be billed for the costs of any notification of excavation if the
6 location of the excavation described in the notice pursuant to § 49-7A-6 is different than the one
7 call center's record of the description of the location of the operator's underground facilities.

8 Section 6. That § 49-7A-8 be amended to read as follows:

9 49-7A-8. An operator shall, upon receipt of the notice provided for in §§ 49-7A-5 and
10 49-7A-6, advise the excavator of the location of underground facilities in the proposed
11 excavation area by marking the location of the facilities with stakes, flags, paint, or other clearly
12 identifiable marking within eighteen inches horizontally from the exterior sides of the
13 underground facilities. The operator shall respond no later than forty-eight hours after receipt
14 of the notice, excluding Saturdays, Sundays, and legal holidays of the state or at a time mutually
15 agreed to by the parties. The board shall promulgate rules, pursuant to chapter 1-26, to establish
16 the response time for operators to mark the underground facilities. The response time shall be
17 no later than forty-eight hours after the receipt of the notice, excluding Saturdays, Sundays, and
18 legal holidays of the state or the excavation start time provided by the excavator, whichever is
19 later. The response time may be less than forty-eight hours for emergency or subsequent inquiries
20 to the original locate request and may be longer than forty-eight hours for nonexcavation
21 requests. Excavators shall maintain a minimum horizontal clearance of eighteen inches between
22 a marked underground facility and the cutting edge of any mechanical equipment. If excavation
23 is required within eighteen inches, horizontally, the excavator shall expose the facility with hand
24 tools or noninvasive methods approved pursuant to rule and shall protect and support the facility

1 prior to further excavation with mechanical equipment.

2 Section 7. That § 49-7A-9 be amended to read as follows:

3 49-7A-9. If location markings requested by an excavator ~~pursuant to §§ 49-7A-5 and~~
4 ~~49-7A-6~~ are not provided within the time specified by ~~those sections~~ § 49-7A-8 or any rule
5 promulgated pursuant to § 49-7A-8, or if the location markings provided fail to identify the
6 location of the underground facilities in accordance with ~~§ 49-7A-8 statute and rule~~, any
7 excavator damaging or injuring underground facilities is not liable for such damage or injury
8 except on proof of negligence.

9 Section 8. That § 49-7A-10 be amended to read as follows:

10 49-7A-10. Compliance with this chapter and the rules promulgated pursuant thereto does not
11 excuse a person from acting in a careful and prudent manner nor does compliance with this
12 chapter and the rules promulgated pursuant thereto affect any civil remedies otherwise provided
13 by law for personal injury or for property damage except as specifically provided in this chapter.
14 If information requested pursuant to ~~§§ 49-7A-5 and 49-7A-8~~ statute or rule, is provided within
15 the time specified ~~by those sections~~, and if the information provided sufficiently identifies the
16 location of the underground facilities in accordance with § 49-7A-8 or any rule promulgated
17 pursuant to § 49-7A-8, any excavator damaging or injuring the underground facilities is strictly
18 liable for all damage proximately caused thereby.

19 Section 9. That § 49-7A-11 be repealed.

20 ~~—49-7A-11. If an excavation is being made in a time of emergency, all reasonable precautions~~
21 ~~shall be taken to protect the underground facilities. In such a case, the excavator shall give~~
22 ~~notification, substantially in compliance with § 49-7A-5 as soon as practical, that an emergency~~
23 ~~exists, and each member shall as soon as practical or no longer than within four hours provide~~
24 ~~to the excavator all location information reasonably available. Any operator who determines that~~

1 ~~its facilities will not be impacted by the notice, shall immediately notify the excavator that the~~
2 ~~operator's facilities are clear from the excavation. An excavator requesting a location due to an~~
3 ~~emergency shall provide the name and the phone number of a person who has knowledge~~
4 ~~regarding the excavation. Any operator or excavator who violates this section is liable for any~~
5 ~~damages incurred.~~

6 Section 10. That § 49-7A-12 be amended to read as follows:

7 49-7A-12. If any underground facility is damaged, dislocated, or disturbed in advance of or
8 during excavation work, the excavator shall immediately notify the operator of the facility, or,
9 if unknown, the one-call notification center of such damage, dislocation, or disturbance. No
10 excavator may conceal or attempt to conceal such damage, dislocation, or disturbance, nor may
11 that excavator attempt to make repairs to the facility unless authorized by the operator of the
12 facility. ~~The board may assess a civil penalty of up to one thousand dollars against any excavator~~
13 ~~who knowingly violates this section.~~

14 Section 11. That chapter 49-7A be amended by adding thereto a NEW SECTION to read
15 as follows:

16 Any person with a complaint against a party who violates or with a complaint against a party
17 who procures, aids, or abets in the violation of § 49-7A-2, 49-7A-5, 49-7A-8, or 49-7A-12, or
18 any rules promulgated pursuant to § 49-7A-2, 49-7A-5, or 49-7A-8, may apply to the board for
19 relief. No complaint may be dismissed because of the absence of direct damage to the
20 complainant or petitioner. The board may promulgate rules of practice prescribing the form for
21 complaints in accordance with chapter 1-26.

22 Section 12. That chapter 49-7A be amended by adding thereto a NEW SECTION to read
23 as follows:

24 Except as provided in section 13 of this Act and in addition to all other penalties provided

1 by law, any person who violates or who procures, aids, or abets in the violation of § 49-7A-2,
2 49-7A-5, 49-7A-8, or 49-7A-12, or any rules promulgated pursuant to § 49-7A-2, 49-7A-5, or
3 49-7A-8 may be assessed a penalty of up to one thousand dollars for the first violation and up
4 to five thousand dollars for each subsequent violation that occurs within twelve months of the
5 initial violation.

6 Section 13. That chapter 49-7A be amended by adding thereto a NEW SECTION to read
7 as follows:

8 In addition to all other penalties provided by law, any person who intentionally violates or
9 who intentionally procures, aids, or abets in the violation of § 49-7A-2, 49-7A-5, 49-7A-8, or
10 49-7A-12, or any rules promulgated pursuant to § 49-7A-2, 49-7A-5, or 49-7A-8 may be
11 assessed a penalty of up to five thousand dollars for the first violation and up to ten thousand
12 dollars for each subsequent violation that occurs within twelve months of the initial violation.

13 Section 14. That chapter 49-7A be amended by adding thereto a NEW SECTION to read
14 as follows:

15 Each violation of any statute or rule of the Statewide One-Call Notification Board constitutes
16 a separate offense. In the case of a continuing violation, each day that the violation continues
17 constitutes a separate violation.

18 Section 15. That chapter 49-7A be amended by adding thereto a NEW SECTION to read
19 as follows:

20 No penalty may be imposed pursuant to sections 12 and 13 of this Act except by order
21 following a complaint pursuant to section 10 of this Act. A complaint alleging a violation of any
22 statute, except § 49-7A-12, or alleging a violation of any rule of the Statewide One-Call
23 Notification Board shall be brought within ninety days of the alleged violation. Any complaint
24 alleging a violation of § 49-7A-12 shall be brought within one year of discovery of the alleged

1 violation.

2 Section 16. That chapter 49-7A be amended by adding thereto a NEW SECTION to read
3 as follows:

4 Upon the initiation of a complaint pursuant to section 11 of this Act, a panel of three or five
5 members of the Statewide One-Call Notification Board shall be appointed by the chair for the
6 purpose of determining whether there is probable cause to believe there has been a violation of
7 any statute or rule of the board. A determination of whether there is probable cause to believe
8 there has been a violation shall be determined by a majority vote of the panel. The panel shall
9 then recommend to the board that the complaint be dismissed for lack of probable cause, or
10 recommend to the board that there is probable cause to believe that there has been violation and
11 recommend what fine, if any, should be imposed pursuant to the provisions of section 12 or 13
12 of this Act.

13 Section 17. That chapter 49-7A be amended by adding thereto a NEW SECTION to read
14 as follows:

15 Upon receipt of a complaint and the appointment of a panel, the panel shall forward to the
16 respondent a statement of the complaint and a notice requiring the respondent to satisfy the
17 complaint or answer it in writing within twenty days from the date of service of the notice or
18 within such further time as may be specified by the board.

19 Section 18. That chapter 49-7A be amended by adding thereto a NEW SECTION to read
20 as follows:

21 The respondent shall, within the time fixed by the notice served upon it, satisfy the complaint
22 or answer the complaint by filing the original and two copies of the answer in the office of the
23 board and serving a copy on each complainant.

24 Section 19. That chapter 49-7A be amended by adding thereto a NEW SECTION to read

1 as follows:

2 A determination of probable cause shall be made by the panel solely on these submissions and
3 no other evidence shall be considered.

4 Section 20. That chapter 49-7A be amended by adding thereto a NEW SECTION to read
5 as follows:

6 The amount of recommended fine shall be determined by a majority vote of the panel.

7 Factors to be considered in determining the amount of the fine shall be:

8 (1) The amount of damage, degree of threat to the public safety, and inconvenience
9 caused;

10 (2) The respondent's plans and procedures to insure future compliance with statute and
11 rules;

12 (3) Any history of previous violations;

13 (4) Other matters as justice requires.

14 Section 21. That chapter 49-7A be amended by adding thereto a NEW SECTION to read
15 as follows:

16 The board shall accept the recommendations of the panel unless either party requests a
17 hearing. The hearing shall be conducted before the board as a contested case under chapter 1-26.

18 Following the hearing, the board shall either render a decision dismissing the complaint for
19 insufficient evidence or shall impose a penalty pursuant to the provisions of section 12 or 13 of
20 this Act.

21 Section 22. That chapter 49-7A be amended by adding thereto a NEW SECTION to read
22 as follows:

23 If the amount of the penalty is not paid to the board, the Public Utilities Commission, at the
24 request of the board, shall bring an action in the name of the State of South Dakota to recover

1 the penalty in accordance with section 27 of this Act. No action may be commenced until after
2 the time has expired for an appeal from the findings, conclusions, and order of the board. The
3 costs and expenses on the part of the commission shall be paid by the board.

4 Section 23. That chapter 49-7A be amended by adding thereto a NEW SECTION to read
5 as follows:

6 In the trial of an action pursuant to section 22 of this Act, the evidence introduced in the
7 proceedings before the board shall constitute the record and evidence on the trial of the case in
8 court. No additional evidence other than that introduced before the board may be introduced at
9 the court trial. The report and order of the board shall be taken and held to be prima facie
10 evidence of the facts stated therein.

11 Section 24. That chapter 49-7A be amended by adding thereto a NEW SECTION to read
12 as follows:

13 The board shall keep a docket in which shall be entered all matters coming before it for
14 determination, with the date of the filing of each paper and the final action of the board in the
15 matter. In connection with such docket, there shall be kept a carefully prepared index in which
16 the names of the parties shall be cross-indexed under the names of both the plaintiff and
17 defendant.

18 Section 25. That chapter 49-7A be amended by adding thereto a NEW SECTION to read
19 as follows:

20 In any action or proceeding based upon a complaint which comes before the board, the board
21 shall keep a full, true, and verbatim record of all evidence introduced at any hearing or trial and
22 prepare and file as a part of its record in the action or proceeding a true and correct transcript
23 of the evidence, and attach all exhibits introduced at the trial. There shall be attached to the
24 transcript a certificate from the recording secretary to the effect that it is a true and correct

1 transcript of all testimony introduced at the trial.

2 Section 26. That chapter 49-7A be amended by adding thereto a NEW SECTION to read
3 as follows:

4 Either party may request the removal of a board member from any hearing based on a conflict
5 of interest. The chair of the Statewide One-Call Notification Board may appoint a replacement
6 from the same representative group identified in § 49-7A-3 as the board member that was
7 removed.

8 Section 27. That chapter 49-7A be amended by adding thereto a NEW SECTION to read
9 as follows:

10 A demand in writing on the party shall be made for the assessed fine before suit is brought
11 for recovery under section 22 of this Act. No suit may be brought until the expiration of thirty
12 days after the demand.

13 Section 28. That chapter 49-7A be amended by adding thereto a NEW SECTION to read
14 as follows:

15 Any action or proceeding or order of the Statewide One-Call Notification Board raises a
16 presumption of validity. The burden is upon the party claiming the order to be invalid to plead
17 and prove the facts establishing the invalidity.

18 Section 29. The provisions of this Act are effective January 1, 2003.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

771H0419

SENATE TRANSPORTATION COMMITTEE ENGROSSED NO. **HB 1273** - 02/13/2002

Introduced by: Representative Duniphan and Senator Ham

1 FOR AN ACT ENTITLED, An Act to revise the requirements for obtaining plates and
2 certificates to park in any space reserved for the disabled.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 32-5-76 be amended to read as follows:

5 32-5-76. An owner of a motor vehicle, who is a resident of this state, who has complied with
6 all the laws of this state in obtaining regular number license plates for the motor vehicle, and who
7 operates or directs the operation of the vehicle, may submit to the county treasurer an application
8 containing a physician's certificate on a form approved by the secretary, ~~which states~~ stating that
9 the applicant is so substantially disabled by a physical disability that it is impossible or causes
10 substantial hardship to walk. The secretary shall promulgate a rule, pursuant to chapter 1-26,
11 defining physical disability and disabled. The county treasurer shall procure, issue, and deliver
12 to the applicant plates with letters, numbers, or symbols, or any combination thereof, as the
13 secretary may prescribe. The plates shall be designed to readily apprise law enforcement officers
14 of the fact that the motor vehicle is owned, operated, or used in transporting a substantially
15 disabled person. No charge may be made for the issuance of the distinctive plates. The distinctive



1 plates shall be in addition to the regular number plates issued for the motor vehicle. The
2 distinctive plates shall be displayed as set forth in § 32-5-98 and the regular number plates shall
3 be kept on or in the motor vehicle. If the applicant is no longer disabled by a physical disability
4 or is deceased, the distinctive plates shall be surrendered within thirty days to the county
5 treasurer of the applicant's residence, and the treasurer shall notify the secretary who shall make
6 the necessary changes in the registration file. The regular number plates shall remain with the
7 motor vehicle to which ~~they~~ the plates were issued. Failure to surrender the distinctive license
8 plates as required by this section is a Class 2 misdemeanor. It is a Class 1 misdemeanor to submit
9 a false or fraudulent application.

10 Section 2. That § 32-5-76.1 be amended to read as follows:

11 32-5-76.1. Any person who is a resident of this state and disabled by a physical disability so
12 that it is impossible or causes substantial hardship to walk may be issued a portable serially
13 numbered certificate by the secretary which permits the person or the operator of a vehicle being
14 used in transporting the person to park without time limitation pursuant to § 32-30-11.1 and to
15 park in any space reserved for the ~~handicapped~~ disabled. The person shall submit an application
16 containing a physician's certificate on forms approved by the secretary to prove that the person
17 meets the criteria established by this section. If the secretary determines that the applicant meets
18 the criteria, the secretary shall issue a portable certificate to the applicant. The secretary shall
19 promulgate rules, pursuant to chapter 1-26, governing the application for, term of, and
20 conditions under which such certificates may be issued. If the applicant is no longer disabled by
21 a physical disability or is deceased, the portable certificate shall be surrendered to the county
22 treasurer of the applicant's residence within thirty days, and the treasurer shall notify the
23 secretary who shall make the necessary changes in the file. Failure to surrender the portable
24 certificate as required by this section is a Class 2 misdemeanor. It is a Class 1 misdemeanor to

1 submit a false or fraudulent application or to alter the portable certificate.

2 Section 3. That § 32-5-76.2 be amended to read as follows:

3 32-5-76.2. Any nonprofit organization, licensed hospital, retirement home, or educational
4 institution which has under its care or responsibility physically disabled persons, which transports
5 physically disabled persons, and which has complied with all laws of this state in obtaining title,
6 license plates, and registration for its motor vehicles may apply for a portable serially numbered
7 certificate which permits the operator of a vehicle transporting the disabled person to park
8 pursuant to § 32-30-11.1 ~~and to park only.~~ However, the vehicle may only park for the time
9 reasonably necessary to load or unload passengers in any space reserved for the ~~handicapped~~
10 disabled. In addition, any local government entity that owns a vehicle used to transport disabled
11 individuals may apply for the portable certificate. The application shall be made on a form
12 approved by the secretary. If the department determines that the applicant transports disabled
13 persons, the secretary shall issue and deliver a portable certificate to the applicant. The secretary
14 may promulgate rules pursuant to chapter 1-26 regarding the application for, term of, and
15 conditions under which the certificate may be issued. If the applicant no longer transports
16 physically disabled persons, ~~it~~ the applicant shall surrender the certificate to the department
17 within thirty days. Failure to surrender the portable certificate as required by this section is a
18 Class 2 misdemeanor. It is a Class 1 misdemeanor to submit a false or fraudulent application or
19 to alter the portable certificate.

20 Section 4. That § 32-5-76.3 be amended to read as follows:

21 32-5-76.3. Any nursing facility licensed pursuant to the provisions of chapter 34-12 and
22 which has complied with all laws of this state in obtaining title, license plates, and registration
23 for its motor vehicles may apply for a set of distinctive plates as prescribed by § 32-5-76 ~~which~~
24 ~~permits~~ permitting the operator of a vehicle transporting any disabled person to park pursuant

1 to § 32-30-11.1. However, the vehicle may only park for the time reasonably necessary to load
2 or unload passengers in any space reserved for the disabled. The application shall be made on a
3 form approved by the secretary. If the department determines that the applicant is licensed as a
4 nursing facility, the secretary shall issue and deliver a set of distinctive plates to the applicant.
5 The secretary may promulgate rules, pursuant to chapter 1-26, regarding the application for,
6 term of, and conditions under which the distinctive plates may be issued. If the applicant no
7 longer transports physically disabled persons, the applicant shall surrender the distinctive plates
8 to the department within thirty days. Failure to surrender the distinctive license plates as required
9 by this section is a Class 2 misdemeanor.

10 Section 5. That § 32-30-11 be amended to read as follows:

11 32-30-11. Any person, other than the veteran to whom it was issued, who uses a disabled
12 veteran's license of identification issued pursuant to ~~§ 32-30-7~~ § 32-5-108 for the purpose of
13 parking an automobile as permitted by § 32-30-8, commits a ~~petty offense~~ Class 2 misdemeanor.
14 In addition the court shall assess a civil penalty of not less than one hundred dollars nor more
15 than three hundred dollars if the parking space is marked in accordance with the American With
16 Disabilities Act accessibility guidelines as of January 1, 2002.

17 Section 6. That § 32-30-11.1 be amended to read as follows:

18 32-30-11.1. Any physically ~~handicapped~~ disabled person, who displays special license plates
19 issued under § 32-5-76 or 32-5-108, a serially numbered certificate issued under § 32-5-76.1 or
20 32-5-76.2, or a similar license plate or certificate issued in another state on an automobile used
21 in transporting ~~him~~ that person, shall be entitled to park without limitation in areas where parking
22 is normally restricted by time factors and to park in any space reserved for the ~~handicapped~~
23 disabled. However, a municipality may, by ordinance, prohibit parking on any street or highway
24 for the purpose of creating a fire lane, or to provide for the accommodation of heavy traffic

1 during morning and afternoon rush hours, ~~and the~~. The privileges extended to such ~~handicapped~~
2 disabled persons ~~shall do~~ not apply on streets or highways where and during ~~such times as any~~
3 time parking is prohibited.

4 Section 7. That § 32-30-11.2 be amended to read as follows:

5 32-30-11.2. If the police of any municipality or any other political subdivision ~~shall find~~ finds
6 that ~~such~~ special license plates or certificates are being improperly used, ~~they~~ the police shall
7 report such violation to the Department of ~~Commerce and Regulation~~ Revenue which ~~may~~ shall
8 revoke the privilege of displaying license plates or certificates ~~so that are~~ that are improperly used.

9 Section 8. That § 32-30-11.3 be amended to read as follows:

10 32-30-11.3. Any person who is not physically ~~handicapped~~ disabled and who exercises the
11 privileges granted a physically ~~handicapped~~ disabled person under § 32-30-11.1 commits a
12 Class 2 misdemeanor. In addition the court shall assess a civil penalty of not less than one
13 hundred dollars nor more than three hundred dollars if the parking space is marked in accordance
14 with the American With Disabilities Act accessibility guidelines as of January 1, 2002.

15 Section 9. That § 32-30-11.4 be amended to read as follows:

16 32-30-11.4. The owner of any vehicle not displaying a serially numbered certificate or special
17 license plate parked or stopped in a parking space, or blocking a parking space, on public or
18 private property designated as reserved for the physically ~~handicapped~~ disabled commits a Class
19 2 misdemeanor. In addition the court shall assess a civil penalty of not less than one hundred
20 dollars nor more than three hundred dollars if the parking space is marked in accordance with
21 the American With Disabilities Act accessibility guidelines as of January 1, 2002.

22 Section 10. That chapter 32-30 be amended by adding thereto a NEW SECTION to read as
23 follows:

24 No owner of a vehicle may park, stop, or stand in an access aisle or lane immediately

1 adjacent to reserved parking spaces or in front of a ramp or curb-cut in such a manner that
2 blocks access to a disabled person who uses a wheelchair. A violation of this section is a Class
3 2 misdemeanor. In addition the court shall assess a civil penalty of not less than one hundred
4 dollars nor more than three hundred dollars if the parking space is marked in accordance with
5 the American With Disabilities Act accessibility guidelines as of January 1, 2002.

6 Section 11. That § 32-30-11.6 be amended to read as follows:

7 32-30-11.6. ~~Municipalities may~~ Each municipality shall by ordinance, designate special
8 parking spaces which shall be accessible to and usable by persons with physical disabilities. The
9 parking spaces shall be designed in accordance with the Americans With Disabilities Act as
10 amended on January 1, 2002.

11 Section 12. That chapter 32-30 be amended by adding thereto a NEW SECTION to read as
12 follows:

13 Each sign designating a parking space for the physically disabled shall state the penalties for
14 illegal use of the parking space. This section only applies to a new sign or a sign that replaces an
15 existing sign after July 1, 2002.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

656H0700

HOUSE ENGROSSED NO. **HB 1291** - 02/07/2002

Introduced by: Representatives Brown (Richard), Bradford, Elliott, and Hennies (Don) and
Senators Diedtrich (Elmer) and Brown (Arnold)

1 FOR AN ACT ENTITLED, An Act to revise the requirements for obtaining a specialty license
2 plate organizational decal.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 32-5-137 be amended to read as follows:

5 32-5-137. To qualify for an organizational decal, an organization shall be a nonprofit
6 corporation, or a group of nonprofit corporations with a common purpose, on file with the
7 secretary of state's office and shall have a minimum of two hundred members and shall meet the
8 following requirements:

- 9 (1) The primary activity or interest of the organization or group of organizations serves
10 the community, contributes to the welfare of others, and is not offensive or
11 discriminatory in its purpose, nature, activity, or name;
- 12 (2) The name and purpose of the organization or group of organizations does not
13 promote any specific product or brand name that is provided for sale; and
- 14 (3) The ~~purpose~~ decal of the organization or group of organizations does not promote a
15 specific religion, faith, or anti-religious belief.



State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

708H0708

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1294** - 02/05/2002

Introduced by: Representative Konold

1 FOR AN ACT ENTITLED, An Act to revise and supplement certain powers of the South
2 Dakota Building Authority and to declare an emergency.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 5-12 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 In addition to all other powers established pursuant to chapter 5-12, the building authority
7 may invest its funds or the funds under its control or direction in permitted investments as
8 defined in subdivision 5-12-48(10).

9 Section 2. That § 5-12-50 be amended to read as follows:

10 5-12-50. The authority may establish by resolution a special purpose corporation which shall
11 be body corporate and politic and instrumentality of, but having a legal existence independent
12 and separate from, the State of South Dakota and the authority. The corporation shall be
13 established for the express limited public purposes set forth in §§ 5-12-48 to 5-12-60, inclusive,
14 and no part of the net earnings of the corporation shall inure to any private individual.

15 The corporation shall be governed by a board consisting of the members of the authority and



1 two additional persons appointed by the Governor, which two additional members shall be
2 independent from the state. The resolution establishing the corporation shall serve as the charter
3 of the corporation and may be amended from time to time by the authority, but the resolution
4 shall at all times provide that the power and the authority of the corporation shall be subject to
5 the terms, conditions, and limitations of §§ 5-12-48 to 5-12-60, inclusive, and any applicable
6 covenants or agreements of the corporation in any indenture or other agreement relating to any
7 then outstanding bonds. The corporation may enter into contracts regarding any matter
8 connected with any corporate purpose within the objects and purposes of §§ 5-12-48 to 5-12-60,
9 inclusive.

10 The authority and corporation may delegate by resolution to one or more officers or
11 employees of the authority or corporation such powers and duties as it may deem proper.

12 The corporation may issue bonds and secure repayment of the bonds with amounts payable
13 out of tobacco settlement revenues or any other property or funds of the corporation. Bonds
14 issued by the corporation shall be accompanied by an opinion of nationally recognized bond
15 counsel substantially to the effect that ~~interest on the bonds is excludable from the gross income~~
16 ~~of the bondholder for federal income tax purposes~~ the bonds are valid and legal obligations of
17 the corporation.

18 The corporation may pledge as security for any bonds any rights under the master settlement
19 agreement held by the corporation, including the right to receive or collect tobacco settlement
20 revenues, moneys, or other funds deposited with, payable to or held by or on behalf of the
21 corporation, and the proceeds of the foregoing and any proceeds of bonds. Any right of the state
22 to the residual interest in tobacco settlement revenues shall be, in all respects, junior and
23 subordinate to any such pledge if and to the extent so provided by the terms of any instrument
24 or agreement described in § 5-12-49 and signed on behalf of the state by the Governor. Any such

1 pledge made by the corporation shall be valid and binding from the time the pledge is made. The
2 property, revenues, moneys, and other funds so pledged and thereafter held or received by or on
3 behalf of the corporation shall immediately be subject to the lien of the pledge without any
4 physical delivery thereof or further act; and, subject only to the provisions of prior pledges or
5 agreements of the corporation, the lien of the pledge shall be valid and binding as against the
6 state and all parties having claims of any kind in tort, contract, or otherwise against the
7 corporation irrespective of whether such parties have notice thereof. No ordinance, resolution,
8 trust agreement, or other instrument by which such pledge is created need be filed or recorded
9 except in the records of the corporation.

10 In connection with the issuance of bonds or, at any time with respect to bonds, the
11 corporation may enter into arrangements to provide additional security and liquidity for bonds.
12 The arrangements may include, without limitation, bond insurance, letters of credit, and lines of
13 credit by which the corporation may borrow funds to pay or redeem its bonds and purchase or
14 remarketing arrangements for assuring the ability of owners of the bonds to sell or have
15 redeemed their bonds. The corporation may enter into contracts and may agree to pay fees to
16 persons providing the arrangements, including from bond proceeds.

17 The resolution authorizing the issuance of bonds or the indenture or other agreement
18 approved by the resolution may provide that interest rates may vary from time to time depending
19 upon criteria established by the corporation, which may include, without limitation, a variation
20 in interest rates as may be necessary to cause bonds to be remarketable from time to time at a
21 price equal to their principal amount, and may provide for appointment of a national banking
22 association, bank, trust company, investment banking firm, or other financial institution to serve
23 as a remarketing agent in that connection. The indenture or other agreement with respect to
24 bonds may provide that alternative interest rates or provisions will apply during such times as

1 bonds are held by a person providing a letter of credit or other credit enhancement arrangement
2 for bonds.

3 In connection with bonds under §§ 5-12-48 to 5-12-60, inclusive, or the investment of
4 proceeds, bonds, or other funds of the corporation, the corporation may enter into contracts that
5 it determines necessary or appropriate to permit it to manage payment or interest rate risk. These
6 contracts may include, but are not limited to, interest rate exchange agreements; contracts
7 providing for payment or receipt of funds based on levels of or changes in interest rates;
8 contracts to exchange cash flows or series of payments; and contracts incorporating interest rate
9 caps, collars, floors, or locks.

10 The corporation may not file a voluntary petition under or be or become a debtor or bankrupt
11 under the federal bankruptcy code or any other federal or state bankruptcy, insolvency, or
12 moratorium law or statute as may, from time to time, be in effect and neither any public officer
13 nor any organization, entity, or other person shall authorize the corporation to be or become a
14 debtor or bankrupt under the federal bankruptcy code or any other federal or state bankruptcy,
15 insolvency, or moratorium law or statute, as may, from time to time be in effect.

16 The corporation may not guarantee the debts of another.

17 The corporation may not be required to file any reports with the state other than those
18 required to be filed with the Legislature by authorities which issue bonds.

19 Except for debts incurred directly by the corporation, no indebtedness, bonds, or obligation,
20 issued, incurred, or created by the State of South Dakota or any state agency or instrumentality
21 may be or become a lien, charge, or liability against the corporation or the property or funds of
22 the corporation.

23 Section 3. Whereas, this Act is necessary for the support of the state government and its
24 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full

1 force and effect from and after its passage and approval.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

435H0763

HOUSE ENGROSSED NO. **HCR 1018** - 02/14/2002

Introduced by: Representatives Teupel, Duenwald, Hennies (Thomas), Juhnke, Lintz, McCoy, Napoli, Peterson (Bill), and Rhoden and Senators Apa, Bogue, Greenfield, McCracken, and Vitter

1 A CONCURRENT RESOLUTION, Expressing the sense of the South Dakota State Legislature
2 about management of the Black Hills National Forest.

3 WHEREAS, catastrophic wildfires not only cause environmental damage to forests and other
4 lands but place the lives of firefighters at risk and pose threats to human health, personal
5 property, sustainable ecosystems, wildlife habitat, air quality, and water quality; and

6 WHEREAS, the seriousness of the fire risk in the national forests has been well documented
7 by both the General Accounting Office and the United States Forest Service; and

8 WHEREAS, research and experience have shown that forest management, including
9 thinning, forest restoration, grazing, measures to control insects and disease, and small-scale
10 prescribed burning, can be an effective long-term strategy for reducing the risk of catastrophic
11 wildfires and insect epidemics, especially in ponderosa pine forests, such as the Black Hills
12 National Forest; and

13 WHEREAS, the mountain pine beetle epidemic now occurring in the Black Hills National
14 Forest has already increased the risk of forest fires in the Black Hills, possibly endangering the



1 lives and property of the citizens of South Dakota; and

2 WHEREAS, the national forests are the property of all the residents of the United States, but
3 the residents who live the closest to the national forests are the ones who will be the most
4 impacted by decisions about how to manage those national forests; and

5 WHEREAS, since the inception of the National Forest System, its supporters have
6 recognized the importance of the support of local residents; and

7 WHEREAS, local governments and residents of South Dakota now find themselves
8 extremely frustrated at the failure of the Forest Service to deal proactively with the mountain
9 pine beetle epidemic in the Black Hills, and especially with the Forest Service's inclination to base
10 decisions more on directives and policies from Washington, D.C., than on the management needs
11 of the Black Hills National Forest or the concerns and issues of local communities and
12 governments in South Dakota; and

13 WHEREAS, a measure of this frustration has been the overwhelming support for the
14 concepts embodied in House Bill 1236, which was introduced during the 2002 Session of the
15 South Dakota Legislature:

16 NOW, THEREFORE, BE IT RESOLVED, by the House of Representatives of the Seventy-
17 seventh Legislature of the State of South Dakota, the Senate concurring therein, that, in the
18 interest of protecting the health and integrity of United States forests, wildlife habitats,
19 watersheds, air quality, human health and safety, and private property, the United States should
20 redefine its working relationship with state and local governments, communities, and residents
21 of South Dakota to ensure that the people who will be the most affected by United States Forest
22 Service decisions will receive the highest level of consideration in those decisions; and

23 BE IT FURTHER RESOLVED, that the United States Forest Service should:

24 (1) Fully implement the Western Governors Association "Collaborative 10-year Strategy

1 for Reducing Wildland Fire Risks to Communities and the Environment" to reduce
2 overabundance of forest fuels that place these resources at high risk of catastrophic
3 wildfire; and

4 (2) Utilize an appropriate mix of fire-prevention activities and management practices
5 including forest restoration, thinning of at-risk forest stands, grazing, selective tree
6 removal and other measures to control insects and pathogens, removal of excessive
7 ground fuels, and small-scale prescribed burns; and

8 BE IT FURTHER RESOLVED, that South Dakota's Congressional Delegation is requested
9 to help enact legislation that will allow the United States Forest Service to implement on-the-
10 ground steps to reduce the risk of catastrophic wildfire in Beaver Park and other high risk areas
11 in the Black Hills National Forest prior to the 2002 fire season; and

12 BE IT FURTHER RESOLVED, that the Black Hills National Forest should be strongly
13 considered for designation as a "Charter Forest," as presented in the President's FY 2003 Budget
14 Request to Congress; and

15 BE IT FURTHER RESOLVED, that the Secretary of State is hereby authorized and directed
16 to forward a copy of this Resolution to the Honorable President of the United States, George
17 W. Bush; the Secretary of Agriculture, Ann Venneman; the United States Forest Service Chief,
18 Dale N. Bosworth; the President of the Senate and the Speaker of the House of Representatives
19 of the United States Congress; and the Congressional Delegation representing the State of South
20 Dakota in the Congress of the United States.

State of South Dakota

SEVENTY-SEVENTH SESSION LEGISLATIVE ASSEMBLY, 2002

395H0679

HOUSE ENGROSSED NO. **HJR 1009** - 02/01/2002

Introduced by: Representatives Duenwald, Bartling, Broderick, Brown (Jarvis), Brown (Richard), Burg, Duniphan, Flowers, Frost, Fryslie, Garnos, Gillespie, Glenski, Hansen (Tom), Hanson (Gary), Hargens, Heineman, Holbeck, Jaspers, Jensen, Juhnke, Klaudt, Konold, Lintz, Michels, Monroe, Nachtigal, Nesselhuf, Olson (Mel), Pederson (Gordon), Peterson (Bill), Peterson (Jim), Rhoden, Richter, Sebert, Sigdestad, Smidt, Sutton (Duane), Van Gerpen, Van Norman, and Wick and Senators Symens, Albers, Apa, Bogue, Brosz, Brown (Arnold), Cradduck, Daugaard, Dennert, Diedrich (Larry), Diedrich (Elmer), Drake, Duxbury, Everist, Greenfield, Hagen, Ham, Hutmacher, Koetzle, Koskan, McCracken, McIntyre, Moore, Munson, Olson (Ed), Vitter, Volesky, and Whiting

1 A JOINT RESOLUTION, Proposing and submitting to the electors at the June 2002 primary
2 election amendments to Article XVII of the Constitution of the State of South Dakota,
3 relating to restrictions on corporate farming.

4 BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF
5 SOUTH DAKOTA, THE SENATE CONCURRING THEREIN:

6 Section 1. That at the June 2002 primary election held in the state, the following amendments
7 to Article XVII of the Constitution of the State of South Dakota, as set forth in sections 2 to 6
8 of this Joint Resolution, which are hereby agreed to, shall be submitted to the electors of the
9 state for approval.

10 Section 2. That Article XVII, section 21 of the Constitution of the State of South Dakota,



1 be repealed.

2 ~~—§ 21. No corporation or syndicate may acquire, or otherwise obtain an interest, whether~~
3 ~~legal, beneficial, or otherwise, in any real estate used for farming in this state, or engage in~~
4 ~~farming. The term, corporation, means any corporation organized under the laws of any state of~~
5 ~~the United States or any country. The term, syndicate, includes any limited partnership, limited~~
6 ~~liability partnership, business trust, or limited liability company organized under the laws of any~~
7 ~~state of the United States or any country. A syndicate does not include general partnerships,~~
8 ~~except general partnerships in which nonfamily farm syndicates or nonfamily farm corporations~~
9 ~~are partners. The term, farming, means the cultivation of land for the production of agricultural~~
10 ~~crops, fruit, or other horticultural products, or the ownership, keeping, or feeding of animals for~~
11 ~~the production of livestock or livestock products.~~

12 Section 3. That Article XVII, section 22 of the Constitution of the State of South Dakota,
13 be repealed.

14 ~~—§ 22. The restrictions in § 21 of this Article do not apply to:~~

15 ~~—(1) A family farm corporation or syndicate. A family farm corporation or syndicate is a~~
16 ~~corporation or syndicate engaged in farming or the ownership of agricultural land, in~~
17 ~~which a majority of the partnership interests, shares, stock, or other ownership~~
18 ~~interests are held by members of a family or a trust created for the benefit of a~~
19 ~~member of that family. The term, family, means natural persons related to one another~~
20 ~~within the fourth degree of kinship according to civil law, or their spouses. At least~~
21 ~~one of the family members in a family farm corporation or syndicate shall reside on~~
22 ~~or be actively engaged in the day-to-day labor and management of the farm.~~
23 ~~Day-to-day labor and management shall require both daily or routine substantial~~
24 ~~physical exertion and administration. None of the corporation's or syndicate's partners,~~

members, or stockholders may be nonresident aliens, or other corporations or syndicates, unless all of the stockholders, members, or partners of such entities are persons related within the fourth degree of kinship to the majority of partners, members, or stockholders in the family farm corporation or syndicate;

~~(2) Agricultural land acquired or leased, or livestock kept, fed or owned, by a cooperative organized under the laws of any state, if a majority of the shares or other interests of ownership in the cooperative are held by members in the cooperative who are natural persons actively engaged in the day-to-day labor and management of a farm, or family farm corporations or syndicates, and who either acquire from the cooperative, through purchase or otherwise, such livestock, or crops produced on such land, or deliver to the cooperative, through sale or otherwise, crops to be used in the keeping or feeding of such livestock;~~

~~(3) Nonprofit corporations organized under state nonprofit corporation law;~~

~~(4) Agricultural land, which, as of the approval date of this amendment, is being farmed, or which is owned or leased, or in which there is a legal or beneficial interest, directly or indirectly owned, acquired, or obtained by a corporation or syndicate, if such land or other interest is held in continuous ownership or under continuous lease by the same such corporation or syndicate. For the purposes of this exemption, land purchased on a contract signed as of the approval date of this amendment is considered as owned on that date;~~

~~(5) Livestock, which as of the approval date of this amendment, is owned by a corporation or syndicate. For the purposes of this exemption, livestock to be produced under contract for a corporation or syndicate are considered as owned, if the contract is for the keeping or feeding of livestock and is signed as of the approval~~

1 date of this amendment, and if the contract remains in effect and is not terminated by
2 either party to the contract. This exemption does not extend beyond the term of any
3 contract signed as of the approval date of this amendment;

4 ~~— (6) — A farm operated for research or experimental purposes, if any commercial sales from~~
5 ~~the farm are only incidental to the research or experimental objectives of the~~
6 ~~corporation or syndicate;~~

7 ~~— (7) — Land leases by alfalfa processors for the production of alfalfa;~~

8 ~~— (8) — Agricultural land operated for the purpose of growing seed, nursery plants, or sod;~~

9 ~~— (9) — Mineral rights on agricultural land;~~

10 ~~— (10) — Agricultural land acquired or leased by a corporation or syndicate for immediate or~~
11 ~~potential nonfarming purposes, for a period of five years from the date of purchase.~~

12 ~~A corporation or syndicate may hold such agricultural land in such acreage as may be~~
13 ~~necessary to its nonfarm business operation, but pending the development of the~~
14 ~~agricultural land for nonfarm purposes, such land may not be used for farming except~~
15 ~~under lease to a family farm corporation or family farm syndicate or a non syndicate~~
16 ~~or noncorporate farm;~~

17 ~~— (11) — Agricultural lands or livestock acquired by a corporation or syndicate by process of~~
18 ~~law in the collection of debts, or by any procedures for the enforcement of a lien,~~
19 ~~encumbrance, or claim thereon, whether created by mortgage or otherwise. Any lands~~
20 ~~so acquired shall be disposed of within a period of five years and may not be used for~~
21 ~~farming before being disposed of, except under a lease to a family farm corporation~~
22 ~~or syndicate, or a nonsyndicate or noncorporate farm. Any livestock so acquired shall~~
23 ~~be disposed of within six months;~~

24 ~~— (12) — Agricultural lands held by a state or nationally chartered bank as trustee for a person,~~

corporation or syndicate that is otherwise exempt from the provisions of §§ 21 to 24,
inclusive, of Article XVII;

~~— (13) A bona fide encumbrance taken for purposes of security;~~

~~— (14) Custom spraying, fertilizing, or harvesting;~~

~~— (15) Livestock futures contracts, livestock purchased for slaughter within two weeks of
the purchase date, or livestock purchased and resold within two weeks.~~

Section 4. That Article XVII, section 23 of the Constitution of the State of South Dakota,
be repealed.

~~§ 23. If a family farm corporation or family farm syndicate that has qualified under all the
requirements of a family farm corporation or a family farm syndicate ceases to meet the defined
criteria, it has twenty years, if the ownership of the majority of the stock of such corporation, or
the majority of the ownership interest of such syndicate, continues to be held by persons related
to one another within the fourth degree of kinship or their spouses, and their land holdings are
not increased, to either requalify as a family farm corporation or family farm syndicate or dissolve
and return to personal ownership.~~

Section 5. That Article XVII, section 24 of the Constitution of the State of South Dakota,
be repealed:

~~§ 24. Any corporation or syndicate that owns agricultural land or engages in farming is
required to report information necessary for the enforcement of §§ 21 to 24, inclusive, of Article
XVII to the secretary of state on an annual basis, under rules promulgated by the secretary
pursuant to state law. The secretary of state shall monitor such reports and notify the attorney
general of any possible violations, and any resident of the state may also notify the attorney
general of any possible violations. If a corporation or syndicate violates any provision of §§ 21
to 24, inclusive, of Article XVII, the attorney general shall commence an action in circuit court~~

~~to enjoin any pending illegal purchase of land or livestock, or to force divestiture of land or livestock held in violation of §§ 21 to 24, inclusive, of Article XVII. The court shall order any land held in violation of §§ 21 to 24 of Article XVII to be divested within two years and any livestock to be divested within six months. If land so ordered by the court has not been divested within two years, the court shall declare the land escheated to the state. If the attorney general fails to bring an action in circuit court to enforce §§ 21 to 24, inclusive, of Article XVII, any resident of the state has standing in circuit court to sue for enforcement.~~

Section 6. That Article XVII of the Constitution of the State of South Dakota be amended by adding thereto a NEW SECTION to read as follows:

§ 25. No corporation may engage in farming or acquire, or otherwise obtain an interest, whether legal, beneficial, or otherwise, in any agricultural land in this state. For purposes of this section, the term, farming, means the ownership of livestock for more than two consecutive weeks, or the cultivation of land for the production of crops or horticultural products. For purposes of this section, the term, corporation, means any legal entity that limits the liability of any investor or owner, except:

- (1) An entity in which all investors are natural persons, and one of the investors is actively engaged in the day-to-day management of the farm land or farm operation;
- (2) An entity in which a majority of the voting rights are owned by qualified persons who own agricultural land or an interest in a farming operation. For purposes of this subdivision, a qualified person is either a natural person or an entity that meets the requirements of subdivision (1) of this section;
- (3) An entity that engages in farming primarily for scientific, medical, research, or experimental purposes;
- (4) An entity that owns only a mineral right, a right-of-way, a utility easement, a

1 transportation easement, a water line easement, a drainage easement, a
2 telecommunication easement, or any less than fee simple interest in land which is held
3 primarily for a nonfarming purpose or use;

4 (5) An entity that purchases any interest in agricultural land primarily for a nonfarming
5 purpose, if the nonfarming purpose is applied to the land within five years of the date
6 of purchase. This exemption applies if the land is used for the nonfarming purpose,
7 and if any farming operations on such land are merely incidental to the primary use
8 and are conducted by contract or lease to a person or entity who is not otherwise
9 prohibited from farming or owning agricultural land in this state;

10 (6) An entity that is a lender and acquires land or livestock as collateral on a debt, if the
11 lender disposes of the land within five years and the livestock within one year of
12 acquisition;

13 (7) A trustee holding lands or livestock for the benefit of persons or entities who are not
14 prohibited from farming or owning agricultural land in South Dakota;

15 (8) An entity or person with a vested property interest in agricultural land or farming on
16 June 1, 2002, or who lawfully engaged in farming or owned agricultural land in this
17 state on November 1, 1998. However, no expansion is allowed under this exemption
18 beyond the size and extent of the farming operation on June 1, 2002; and

19 (9) A nonprofit entity as defined in law by the South Dakota Legislature.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

400H0247

HOUSE ENGROSSED NO. **SB 36** - 02/14/2002

Introduced by: The Committee on Taxation at the request of the Department of Revenue

1 FOR AN ACT ENTITLED, An Act to impose a sales and use tax on mobile telecommunications
2 services and to implement the federal uniform and simplified sourcing rules for mobile
3 telecommunications services.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as
6 follows:

7 There is hereby imposed a tax of four percent upon the gross receipts of mobile
8 telecommunications services, as defined in 4 U.S.C. § 124(7) as of January 1, 2002, that
9 originate and terminate in the same state and are billed to a customer with a place of primary use
10 in this state. Notwithstanding any other provision of this chapter and for purposes of the tax
11 imposed by this section, the tax imposed upon mobile telecommunication services shall be
12 administered in accordance with 4 U.S.C. §§ 116-126 as in effect on July 28, 2000.

13 Section 2. That chapter 10-46 be amended by adding thereto a NEW SECTION to read as
14 follows:

15 There is hereby imposed a tax of four percent upon the privilege of the use of mobile



telecommunications services, as defined in 4 U.S.C. § 124(7) as of January 1, 2002, that originate and terminate in the same state and are billed to a customer with a place of primary use in this state. Notwithstanding any other provision of this chapter and for purposes of the tax imposed by this section, the tax imposed upon mobile telecommunication services shall be administered in accordance with 4 U.S.C. §§ 116-126 as in effect on July 28, 2000.

Section 3. That subdivision (7) of § 34-45-1 be amended to read as follows:

(7) "911 emergency surcharge," any charge set by the governing body and assessed on each local exchange access line which physically terminates within the governing body's designated 911 service area. For a mobile telecommunications service, the term, 911 emergency surcharge, means any charge set by the governing body and assessed per cellular telephone identified within the governing body's designated 911 service area as determined by the customer's place of primary use as defined in 4 U.S.C. § 124 as in effect on July 28, 2000. Notwithstanding any other provision of this chapter and for purposes of the surcharge imposed by this chapter, the surcharge imposed upon mobile telecommunication services shall be administered in accordance with 4 U.S.C. §§ 116-126 as in effect on July 28, 2000;

Section 4. That § 49-31-51 be amended to read as follows:

49-31-51. There is hereby imposed an access fee of fifteen cents per local exchange service line per month, fifteen cents per cellular telephone per month in accordance with the provisions provided in subdivision 34-45-1(7), and fifteen cents per radio pager device per month to pay for the program established in § 49-31-47. The access fee shall be paid by each local exchange subscriber to a local exchange service, or by each cellular telephone or radio pager service subscriber to the service provider, unless the subscriber is otherwise exempt from taxation. The access fee shall be reported as a separate line or service and collected on the regular monthly bill

1 by each local exchange telecommunications company or other service provider operating in this
2 state. On or before the last day of the month following each two-month period, every
3 telecommunications company providing local exchange service or other service provided
4 specified in this section shall remit to the Department of Revenue on forms furnished by the
5 department the amount of the access fee collected for that two-month period. The secretary of
6 revenue may grant an extension of not more than five days for filing a remittance. The
7 Department of Revenue shall deposit ninety percent of the money received under §§ 49-31-47
8 to 49-31-56, inclusive, into the telecommunication fund for the deaf and ten percent in the
9 telecommunication fund for other disabilities.

10 Section 5. That § 10-45-6.1 be amended to read as follows:

11 10-45-6.1. ~~There~~ Except as provided in section 1 of this Act, there is hereby imposed on
12 amounts paid for local telephone services, toll telephone services, and teletypewriter services,
13 a tax of four percent of the amount so paid. The taxes imposed by this section shall be paid by
14 the person paying for the services. If a bill is rendered the taxpayer for local telephone service
15 or toll telephone service, the amount on which the tax with respect to such services shall be
16 based shall be the sum of all charges for such services included in the bill; except that if a person
17 who renders the bill groups individual items for purposes of rendering the bill and computing the
18 tax, then the amount on which the tax for each such group shall be based shall be the sum of all
19 items within that group, and the tax on the remaining items not included in any such group shall
20 be based on the charge for each item separately. If the tax imposed by this section with respect
21 to toll telephone service is paid by inserting coins in coin operated telephones, the tax shall be
22 computed to the nearest multiple of five cents, except that, where the tax is midway between
23 multiples of five cents, the next higher multiple shall apply. The tax so paid shall be remitted at
24 the same time as the sales tax imposed by this chapter.

1 Section 6. The provisions of this Act apply to any customer bill issued on or after August 1,
2 2002.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

372H0606

HOUSE AGRICULTURE AND NATURAL RESOURCES

COMMITTEE ENGROSSED NO. **SB 130** - 02/12/2002

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Senators Bogue, Cradduck, Duxbury, Everist, Kleven, Koskan, Madden, McCracken, Putnam, and Vitter and Representatives Rhoden, Juhnke, Klaudt, Lintz, Madsen, McCaulley, Pederson (Gordon), Pummel, and Teupel

1 FOR AN ACT ENTITLED, An Act to provide for the implementation of certain prairie dog
2 management plans or activities with legislative approval.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. The Department of Game, Fish and Parks and the Department of Agriculture are
5 directed to develop a state prairie dog management plan. The plan shall formulate state
6 management actions that will serve to prevent the prairie dog from being listed as a federal
7 threatened or endangered species. If such plan or any agreement adopted pursuant to such plan
8 contains provisions for incentive payments to private landowners for managing prairie dog
9 habitat or restricts private landowner rights to use any means of controlling prairie dogs on their
10 property, the plan or any agreement adopted pursuant to such plan shall be submitted to the
11 South Dakota Legislature, in bill form, for approval, prior to it becoming effective.

12 Section 2. That § 40-36-1 be amended to read as follows:

13 40-36-1. The Department of Game, Fish and Parks shall cooperate and enter into cooperative



1 agreements with the United States Fish and Wildlife Service or any other agency in the control
2 and disposition of coyotes, feral dogs, fox, ~~prairie dogs~~, and other wild animals in this state that
3 are injurious to livestock, poultry, game, land, and the public health.